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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/758,001

01/16/2004

Eugenio Cruz Garcia

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07/10/2008

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

07/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/758,001 | <b>Applicant(s)</b><br>GARCIA, EUGENIO CRUZ |  |
|                              | <b>Examiner</b><br>JESSICA LAUX      | <b>Art Unit</b><br>3635                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/01/08; 04/30/08</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Acknowledgement is made of Applicant's RCE filed 04/30/2008. Accordingly the claims have been amended.

#### ***Response to Arguments***

Applicant's arguments filed 04/01/2008 have been fully considered but they are not persuasive.

Applicant submits that Piacente or Martensson either alone or in combination do not disclose a laminated floor board comprising cellulose sheets with a surface texture that varies in accordance with the visual pattern and that the method of producing the surface of Piacente cannot be applied to Martensson. This is not persuasive because the Office never asserted that Piacente or Martensson alone anticipated the claims but rather that Martensson in view of Piacente anticipated the claims where Piacente is relied upon for the teaching of having a surface texture that varies in accordance with a visual pattern which it clearly teaches. The argument that the method of making such a surface cannot be applied to Martensson is moot as this is an article claim and the method of making is not claimed. Further it is noted that Piacente is not relied on for its method teachings but rather for the teaching that it is known in the art to have a floor panel that has a surface texture that varies in accordance with a visual pattern that imitates another product.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martensson (6146252) in view of Piacente et al (5858160).**

Claims 13-15: Martensson discloses a laminated material comprising at least one cellulose sheet impregnated with resin that is mechanically pressed and cut into a product (Col. 3, lines 21-44 and claims 15-19) said product having a fiberboard core (col. 1, lines 14-20). The product includes a surface with a machined edged contour (14 and 18, Figure 2 and Col. 1, lines 21-28) and an interior region (top surface of 13, Figure 2), where in the edge contour lies below the interior region. While the edge contour is shown to have a substantially linear cross-sectional shape from the interior region to an edge of the product (14, Figure 2), Martensson discloses that the edge contour may also have smooth edges, as in forming curved grooves and tenons for floor boards that are joined side by side (Col. 1, lines 21-28). The laminate also comprises one patterned sheet (Col. 3, lines 26-28). Since the patterned sheet is laminated as a layer of the product prior to edge contouring, the pattern will not extend into the edge contour.

Martensson does not disclose the laminated material to have a surface texture that varies in accordance with a visual pattern that imitates another product. Piacente et al. discloses a panel for flooring that has a surface texture that varies in accordance with a visual pattern that imitates another product (Col. 3, lines 26-28; Col. 1, lines 53-57).

In view of Piacente et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the top surface of Martensson's floor

panel with impression that follow the underlying décor to enhance the realistic effect of the décor.

### ***Conclusion***

This is a RCE of applicant's application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Mon.-thursday, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/  
Primary Examiner, Art Unit 3633

JL